

Applicant : Walker et al
Serial No. : 10/702,198
Filed : November 4, 2003
Page : 6 of 7

Attorney's Docket No.: 08168-053001

REMARKS

Applicant hereby submits another abstract without the instructional text that was inadvertently provided in the last response (but which text was not presented with the abstract on its separate sheet as an attachment).

In a final office action, claims 13 and 14 were rejected as being anticipated by Kohler, Jr., DES 280,342 (hereinafter, "Kohler"). Claim 15 was rejected as being unpatentable over Kohler in view of Mattson, Jr. et al., U.S. Pat. No. 6,395,167 (hereinafter, "Mattson").

Claim 13 has been amended to clarify the subject matter of the invention.

The present claims are directed to a curvilinear spa shell. A spa shell defines an interior space of a spa, in which water is placed, but the spa shell also defines a shape of the spa, both exterior and interior. The shape of the spa shell is important, in that it also represents the types and amounts of materials required to manufacture and assemble the spa shell.

Claim 13 has been amended to clarify that the spa shell includes a top edge that defines a *shape* of the spa shell, and does not just define an interior of the spa shell. Claim 13 also recites "wherein the top edge is substantially symmetrical both about an axis that bisects the interior through two side walls and about an axis that bisects the interior through two corners." This limitation of symmetry provides that parts of the spa shell can be constructed in an economical manner using four identical pieces, as well as provide a certain harmonized aesthetic.

Kohler teaches a squared spa shell, and shows a top edge having four squared corners on the outside. Kohler simply does not teach each and every element of claim 13. Kohler does not show a top edge that is substantially symmetrical in *both* an axis that bisects the interior through two side walls *and* about an axis that bisects the interior through two corners. An axis drawn through the middle of two side walls of Kohler would yield a very asymmetrical design because adjacent cut-out seat areas of the Kohler spa shell are not the same size.

The rejection includes a picture of the Kohler design with superimposed dotted lines, which allegedly are drawn according to the requirements of claim 13. However, none of the superimposed dotted lines represents either axis as claimed in claim 13. Respectfully, the

Applicant : Walker et al.
Serial No. : 10/702,198
Filed : November 4, 2003
Page : 7 of 7

Attorney's Docket No.: 08168-053001

attempt to show the required symmetry of the claim 13 in the Kohler design is inaccurate and incorrect.

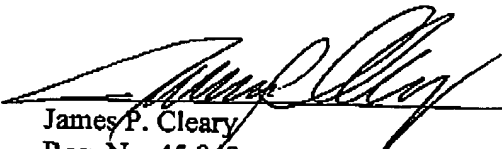
Accordingly, for the reasons set forth above, claim 13 is not anticipated by Kohler, and Applicant respectfully requests withdrawal of the rejection and a notice of allowance.

Claims 14 and 15 are patentable at least for their dependence on allowable claim 13.

Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: 10/7/05


James P. Cleary
Reg. No. 45,843

Fish & Richardson P.C.
12390 El Camino Real
San Diego, California 92130
Telephone: (858) 678-5070
Facsimile: (858) 678-5099

10555620.doc